

Candidate Species & Candidate Conservation Agreements With Assurances For Private Property Owners

What is a candidate species?

Candidate species are plants and animals for which the Fish and Wildlife Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act, however, development of a proposed listing regulation is precluded by other higher priority listing activities. The National Marine Fisheries Service, which has jurisdiction over most marine species, has a broader definition for candidate species which also includes species whose status is of concern but more information is needed before they can be proposed for listing.

How does the public know what species are candidates for listing?

The Service annually publishes a Notice of Review in the *Federal Register* that provides an updated list of plants and animals native to the United States that are regarded as candidates for possible listing. While there is no requirement under the ESA to publish such a list, the Service believes that it is important to advise other Federal agencies, State and Tribal governments, local governments, industry, and the public of those species that are at risk and may warrant ESA protection. Advance notice of potential ESA listings can assist environmental planning efforts allowing resource managers to alleviate threats and thereby possibly remove the need to list these taxa. In publishing the candidate species list, the Service also is soliciting any new information that may be available on the biology, status, and

distribution of these species or other potential candidates. NMFS periodically publishes in the *Federal Register* a list of the species it regards as candidates.

What protection does the ESA provide to candidate species?

Candidate species receive no statutory protection under the ESA. However, the Service encourages the formation of partnerships to conserve these species since they are by definition species that may warrant future protection under the ESA.

How do species become candidates?

Identification of potential candidates is a cooperative effort. The Service's Endangered Species specialists work closely with staff from other Service resource programs, such as fisheries, refuges, and migratory birds, as well as representatives of other Federal and State natural resource agencies, local and Tribal governments, business and industry, academia, and other private interests to identify potential candidate species. The Nature Conservancy's Natural Heritage Central Databases system, which ranks species' status at State, National, and global levels based on their relative imperilment, also is an important tool for identifying potential candidate species.

When sufficient information is developed to make well documented, biologically sound determinations about a species' status, the Service's Field Offices consider whether it meets the criteria for listing under the ESA. The Service's Regional Offices then provide

recommendations for additions to the candidate list to the Service's Director, whose concurrence is necessary before a species becomes an official candidate species. Species are assigned a listing priority from 1 to 12 based on the magnitude of threats they face, the immediacy of the threats, and taxonomic uniqueness (for example, full species have higher priority than subspecies). The species' listing priority dictates the relative order in which proposed listing rules are prepared, with the species at greatest risk (listing priority 1 through 3) being proposed first.

How many species are currently candidates for listing?

As of April 30, 1999, 154 species were candidates for listing and 69 species were proposed for listing.

What is the advantage of conserving species that are already candidates or proposed for listing?

An effective program for the conservation of endangered species requires a means of addressing species that have not yet been listed but that face immediate, identifiable risks. Early conservation preserves management options, minimizes the cost of recovery, and reduces the potential for restrictive land use policies in the future. Addressing the needs of species before the regulatory restrictions associated with listed species come into play often allows greater management flexibility to stabilize or restore these species and their habitats. In addition, as threats are reduced and populations are

increased or stabilized, priority for listing can be shifted to those species in greatest need of the ESA's protective measures. Ideally, sufficient threats can be removed to eliminate the need for listing.

What are Candidate Conservation Agreements?

Candidate Conservation Agreements are formal agreements between the Service and one or more parties to address the conservation needs of proposed or candidate species before they become listed as endangered or threatened. The participants voluntarily commit to implementing specific actions that will remove or reduce the threats to these species, thereby contributing to stabilizing or restoring the species so that listing is no longer necessary. The Service has entered into many Candidate Conservation Agreements over the years, primarily with other Federal agencies, State and local agencies, and conservation organizations, such as The Nature Conservancy. Some of these have successfully removed threats and listing was avoided.

What are Candidate Conservation Agreements with Property Owner Assurances?

Conservation of fish and wildlife resources on private lands is critical to maintaining our Nation's biodiversity. However, private property owners may face land use restrictions if species found on their lands are listed under the ESA in the future. The potential for future land use restrictions has led some property owners to manage their lands to prevent or discourage colonization of their property by these species. One incentive property owners need to voluntarily promote candidate conservation on their lands and waters is future regulatory certainty. Therefore, in accordance with the Administration's decision to provide needed certainty, the Service and NMFS have finalized a policy to establish standards and procedures for developing Candidate Conservation Agreements with assurances for private property owners. This final policy and associated regulations were published in the *Federal Register* on June 17, 1999.

This new approach to Candidate Conservation Agreements provides non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to

candidate or proposed species assurances that their conservation efforts will not incur future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. The Service would provide technical assistance in the development of these Agreements. Property owners may protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations, restore historic populations, or undertake other activities on their lands to improve the status of candidate or proposed species. The management activities included in the Agreement must significantly contribute to elimination of the need to list the target species. Although a single property owner's activities alone may not be sufficient to eliminate the need to list, the activities, if conducted by other property owners in similar situations throughout the range of the species, must be sufficient to eliminate the need to list.

In return for the participant's proactive management, the Service intends to provide incidental take authorization through the section 10(a)(1)(A) process of the ESA, which authorizes issuance of permits that will enhance the survival of the species. The permit would allow participants to take individuals or modify habitat to return population levels and habitat conditions to those agreed upon and specified in the Agreement.

What species can be included in a Candidate Conservation Agreement?

Candidate Conservation Agreements may include plants and animals that have been proposed for listing or are candidates for listing. Species that may be considered for candidate status in the near future and State-listed species may also be included in an Agreement for a candidate or proposed species.

What benefits must the species receive?

The ultimate goal of any Candidate Conservation Agreement is to remove enough threats to the target species to eliminate the need for protection under the ESA. Before entering into a Candidate Conservation Agreement and providing regulatory assurances, the Service must reasonably expect and make a written finding that the species included in the Agreement will receive a sufficient conservation benefit from the activities conducted under the

Agreement. This benefit must be expected to be of a level that, if undertaken by other property owners similarly situated, would be cumulatively significant enough to remove the need to list the covered species.

Conservation benefits may include reduction of habitat fragmentation rates, restoration or enhancement of habitats, increase in habitat connectivity, maintenance or increase of population numbers or distribution, reduction of the effects of catastrophic events, establishment of buffers for protected areas, and areas to test and develop new and innovative conservation strategies. Recognizing that while a species is a candidate, a property owner is under no obligation to avoid take, the assessment of benefits would include consideration for what the property owner agrees not to do as well as any enhancement measures he or she agrees to undertake. Although the Agreement does not have to provide permanent conservation for the species, it must be of sufficient duration and design to provide a long term net conservation benefit. If the Service and the property owner cannot agree to a set of management actions which, if undertaken by other property owners similarly situated within the range of the species, are sufficient to remove the need to list a species to be covered in the Agreement, the Service would not enter into the Agreement.

What assurances does the property owner receive?

The Service will provide assurances that, in the event a species covered in the Agreement is subsequently listed as endangered or threatened, the Service will not assert additional restrictions or require additional actions above those the property owner voluntarily committed to in the Agreement. At the time the parties enter into the Agreement, the Service would issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA authorizing the property owner to take individuals or modify habitat to return the property to the conditions agreed upon and specified in the Agreement. The effective date on the permit would be tied to the date any covered species becomes listed. The Service is proposing regulations to facilitate the issuance of these permits.

What must the Candidate Conservation Agreement include?

The Candidate Conservation Agreement must include:

- n A description of the population levels (if available or determinable) of the covered (proposed, candidate, or unlisted) species, or the existing habitat characteristics that sustain any current, permanent, or seasonal use by the covered species on lands or waters under the property owner's control, or habitat characteristics of such lands that support populations of covered species in waterways that may not be under the property owner's control, at the time the parties negotiate the Agreement;
- n A description of the management actions the property owner is willing to undertake to conserve the species covered by the Agreement and which the Service has determined are sufficient to remove the threats to avoid listing if they are undertaken by other property owners similarly situated;
- n An estimate of the expected conservation benefits as a result of management actions (e.g., increase in population numbers, enhancement, restoration, or preservation of suitable habitat; removal of threats) and the conditions that the property owner agrees to maintain that will remove the threats to the species and eliminate the need to list;
- n Assurances that the Service would not require additional actions or impose additional take restrictions beyond those agreed to if a covered species is listed in the future;
- n A description of the level of monitoring necessary to determine how the species is responding to the prescribed management activities;
- n A notification requirement, where appropriate and feasible, to provide the Service or appropriate State agencies with a reasonable opportunity to rescue individual specimens of a covered species before any authorized incidental taking occurs.

Who can participate in a Candidate Conservation Agreement with Assurances?

A Candidate Conservation Agreement will involve the Service, one or more non-Federal property owners, and

possibly other cooperators. State fish and wildlife agencies, which have primary jurisdiction over species that are not federally listed, should be a cooperator in any Candidate Conservation Agreement. Other potential cooperators include neighboring property owners, State or local agencies, Tribal governments, or Federal property owners. Only non-Federal property owners may receive regulatory assurances under the Agreement.

Will there be any public notification of Candidate Conservation Agreements?

As with other section 10 permits, the Service will publish a notice in the *Federal Register* when it receives the permit application. The Service will announce receipt and availability of the application and Agreement and will accept and consider comments from the public before making a final decision on issuance of the permit.

What if I already have listed species on my lands?

If a private property owner already has listed species occurring permanently or seasonally on his lands and he wishes to voluntarily undertake management activities on his lands or waters that enhance, restore, or maintain habitat benefiting such species, the Service and the property owner may enter into a "safe harbor agreement" for the listed species. A safe harbor agreement is similar to a Candidate Conservation Agreement in that it can authorize incidental take of listed species provided the property owner carried out the activities and maintains the conditions agreed upon in the Agreement. If both listed and candidate species occur or likely occur on the property owner's property, both a safe harbor agreement and a Candidate Conservation Agreement would be appropriate.

What if I sell my land? Is the Agreement transferable?

If a property owner who is party to a Candidate Conservation Agreement transfers ownership of the lands included in the Agreement, the Services will regard the new owner as having the same rights with respect to the subject lands as the original property owner if the new property owner agrees to become part of the original Agreement.

Who should I contact to initiate a Candidate Conservation Agreement?

Interested parties should contact the Fish and Wildlife Service Field Office for their State to discuss potential cooperative opportunities. For information on the final policy and regulations, contact our Headquarters Office at the address below. More information and office addresses can also be found by visiting the Fish & Wildlife Service website.

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